



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 637**

IN THE MATTER OF EDWARD FENNELLY

DISPOSITION AGREEMENT

The State Ethics Commission and Edward Fennelly enter into this Disposition Agreement pursuant to section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Fennelly. The Commission concluded that inquiry, and on March 1, 2001, found reasonable cause to believe that Fennelly violated G.L. c. 268A.

The Commission and Fennelly now agree to the following findings of fact and conclusions of law:

Findings of Fact

At all times relevant, Fennelly served on the Tyringham Board of Selectmen ("BOS").

As such, he was a municipal employee within the meaning of §1 of the conflict of interest law, G.L. c. 268A.

1. The selectmen also serve as the Board of Health ("BOH").
2. Peter Curtin and Fennelly are close friends. Curtin is also a selectman. 3. Curtin was employed as a caretaker for a property in Tyringham.
4. In summer 1997, a pond located on the property was dredged.
5. At the September 25, 1997 meeting, the BOH decided that the silt from the pond dredging would be dumped at the Tyringham Transfer Station ("TTS").
6. On September 27, 1997, Curtin arranged to have the silt dumped at the TTS.
7. Shortly thereafter a heavy rain caused the silt to "run-off" and damage nearby wetlands.
8. A local restaurant owner, Donald Hale, complained to the Division of Environmental Protection about the damage. The DEP eventually fined Curtin for the illegal dumping.
9. Shortly after Hale complained to the DEP about the silt run-off: (a) Fennelly confronted Hale about his complaint to the DEP regarding the silt-run-off, and told Hale that he could shut down

Hale's restaurant if he wanted to;^{1/} and (b) Fennelly, as a Board member, requested local and state health and building inspections of Hale's restaurant. All the inspections were within the authority of the Board to order.

Conclusions of Law

10. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

11. By, as a Board member, requesting inspections of Hale's restaurant shortly after Hale complained about Curtin's dumping, while Curtin was Fennelly's close friend and colleague, and, after stating that he could shut down Hale's restaurant if he wanted, Fennelly acted in a manner which would cause a reasonable person knowing all of these facts to conclude that he was improperly influenced in the performance of his official duties by his friendship and association with Curtin. Therefore, Fennelly violated §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Fennelly:

(1) that Fennelly pay to the Commission the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Fennelly waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: August 21, 2001

^{1/}According to Fennelly, he believed that Hale had not remedied past health code violations at his restaurant.